



July 16, 2018

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Subject: *Notice of ex parte presentations*
 CAF Performance Metrics (WC Docket No. 10-90)

Dear Ms. Dortch:

On July 12, 2018, Hughes Network Systems, LLC (“Hughes”) spoke separately by telephone with Jay Schwarz of the Office of Chairman Pai and Amy Bender of the Office of Commissioner Michael O’Rielly regarding the *Bureau Order* in the above-captioned docket setting performance metrics for CAF support recipients.¹ On the calls, Hughes was represented by myself and Hughes’ outside counsel L. Charles Keller of Wilkinson Barker Knauer LLP.

On the calls, Hughes expressed concern regarding the *Bureau Order’s* decision to require CAF recipients in the higher-latency tier to meet live “conversation-opinion” tests.² By requiring high-latency bidders to meet one component of the ITU-T P.800 standard – the conversational-opinion test – the *Bureau Order* imposes an unnecessary burden that violates the Commission’s principle of competitive neutrality.

First, the Bureaus’ decision on this issue was procedurally unsound. The Bureaus could not have reached a reasoned decision on whether to select one aspect of the ITU-T P.800 standard because the full Commission stated in January that it found “that there is *insufficient information in the record* to specify which of the ITU’s recommended options applicants should be prepared to use to demonstrate an MOS of four or higher.”³ The Bureaus never sought additional comment on this issue, and the *Bureau Order* cites no new information to support the decision.

The Bureaus’ rationale for requiring the conversational-opinion test was also inconsistent with the Commission’s prior determinations. The Bureaus stated that they selected the conversation-opinion test over the listening-opinion test because the “back-and-forth of conversations highlights delay, echo, and other issues caused by latency in

¹ *Connect America Fund*, Order, DA 18-710 (WCB, WTB, and OET, rel. July 6, 2018) (“*Bureau Order*”).

² *Id.* at ¶¶ 44-46.

³ *Connect America Fund, et al*, Order on Reconsideration, 33 FCC Rcd 1380, 1386 ¶ 16 (2018) (emphasis added).

a way that one-way, passive listening cannot.”⁴ But the Commission has already imposed a latency limitation on the high-latency bidding tier – 750 ms.⁵ The purpose of the MOS score requirement is not to measure latency, it is to measure call quality.⁶ That is achieved with the listening test.⁷

In addition, the supplemental burden of conversation-opinion testing is inconsistent with the Commission’s conclusion that the CAF-II auction is to be “technology neutral.”⁸ Satellite providers are already penalized heavily for latency. The Bureaus’ adoption of an unnecessarily burdensome performance metric for showing MOS 4 compliance is not competitively neutral to satellite providers. This is apparent in the striking difference in the way the Bureaus’ handled parameters of concern to fiber-based providers. The Bureaus adopted an “80/80” compliance standard for speed in part in recognition that, “because of technical limitations, it is currently unrealistic to expect that providers obligated to provide gigabit service ... achieve actual speeds of 1,000 Mbps download at the customer premises.”⁹ The Bureaus stated: “We do not want to discourage carriers from bidding in the upcoming CAF auction to provide 1 Gbps service by requiring unachievable service levels.”¹⁰ The Bureaus should have shown similar deference to what is “realistic to achieve” given the “technical limitations” of satellite service.

The *Bureau Order*’s decision is also of concern because the required conditions for conversation-opinion testing set out in Annex A to the ITU-T Recommendation P.800 are excessively burdensome (e.g., use of soundproof rooms, strict recording of ambient noise levels before and after tests).¹¹ At minimum, the Commission must clarify that the commercial operating conditions set out for testing in the *Bureau Order* apply rather than the conditions in Annex A to ITU-T Recommendation P.800.¹²

⁴ *Bureau Order* at ¶ 44.

⁵ *Connect America Fund, et al*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5957 ¶ 15 (2016) (“*CAF Auction Order*”).

⁶ *Id.* at 5962 ¶ 33.

⁷ The ITU-T P.800 specification selected by the Commission specifically states that the “results of listening-only tests can be applied ... to the prediction of the assessment for conversation conducted over a two-way system.” ITU-T P.800, Methods for Subjective Determination of Transmission Quality (Aug. 1996), at 4 (“ITU-T P.800”). The specification states that this use case is subject to two provisos – that “the effects of the following additional factors are duly taken into account: talking degradation (sidetone and echo) and conversation degradation (propagation time and mutilation of speech by the action of voice-operated devices).” *Id.* There is no reason that these factors cannot be taken account in a listening-opinion MOS test

⁸ *CAF Auction Order*, 31 FCC Rcd at 5956 ¶ 14.

⁹ *Bureau Order* at ¶ 55.

¹⁰ *Id.*

¹¹ ITU-T P.800 at Annex A, 5-13.

¹² See *Bureau Order* at ¶¶ 45-46.

We also noted that the Commission should clarify that high-latency recipients of CAF support awarded through the New NY Broadband Program are required to comply with the provisions of the *New York Waiver Order* rather than the *Bureau Order* with respect to compliance with the ITU-T P.800 MOS requirement. In the *New York Waiver Order*, the Commission stated that “Phase II recipients committing to provide a MOS of four or higher should be prepared to submit laboratory testing consistent with International Telecommunication Union recommendations P.800.”¹³ That recommendation allows *either* listening *or* conversation testing. Since New York support has already been awarded, parties cannot be subjected to burdensome new requirements after the auction already has closed.

Please direct any questions regarding this filing to the undersigned.

Sincerely,

/s/

Jennifer A. Manner
Senior Vice President, Regulatory Affairs

Cc: Jay Schwarz
Amy Bender

¹³ *Connect America Fund, et al.*, Order, 32 FCC Rcd 968, 987 ¶ 50 & n.135 (2017).